



May 12, 2020

VIA ECF

The Honorable Anthony J. Trenga
The Honorable John F. Anderson
Eastern District of Virginia
401 Courthouse Square
Alexandria, VA 22314

RE: *In Re: Capital One Consumer Data Security Litigation*,
MDL No. 1:19md2915 (AJT/JFA)

Dear Judges Trenga and Anderson:

On behalf of Lead Plaintiffs' Counsel, we submit this letter in advance of the status conference set for this afternoon to briefly outline Plaintiffs' reaction to Defendants' Status Report filed yesterday (Doc. 440) and its likely impact on the current schedule.

Capital One's description of its document production explains, for the first time, that it intends to produce perhaps as much as 40% of its total production—or 100,000 documents—between June 15 and June 30, 2020, well after the current June 1, 2020, deadline for “substantial completion.” Although we take issue with some of Capital One's representations regarding the search-term negotiation and other justifications for the delay, we have no objection to Capital One's request to move the substantial completion date from June 1, 2020, to July 1, 2020 *provided* the remainder of the schedule is modified by 60 days to address both the overall delay in production, the fact that a substantial percentage of the production will come in just under this new deadline, and the fact that the total volume of the production far exceeds initial estimates that drove the original schedule. By way of example, the current close of fact discovery is currently September 21, 2020, less than 3 months after Defendants' proposed substantial completion of discovery date. Doc. 360.

There are two additional considerations that guide Plaintiffs' proposal set forth below. *First*, Capital One has refused to accelerate the deposition schedule by producing custodial documents for witnesses in advance of the depositions Plaintiffs scheduled for May and June. Instead, as confirmed on page 16 of Defendants' Status Report, Capital One's position is that no depositions should proceed until the completion of Capital One's document production, which means witness depositions will not commence before the second week of July. *Second*, there are several pending and forthcoming motions to compel that touch on issues that may lead to the production of tens of thousands of additional documents over which Capital One currently claims privilege. A similar issue is likely to impact Amazon's production, as Amazon has outright refused production on relevancy grounds on two key requests that will be presented to Judge Anderson in the coming week.

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Plaintiffs therefore propose the following modification to the current schedule (Doc. 360) based on a July 1, 2020 substantial completion date.

Event	Current Date (Dkt. 360)	New Date
Fact Discovery Closes	September 21, 2020	November 20, 2020
Lead Counsel to serve disclosure of expert(s) and expert report(s)	October 21, 2020	December 23, 2020
Lead Counsel to identify rebuttal expert(s) and serve rebuttal expert report(s)	November 20, 2020	January 20, 2021
Lead Counsel to complete any depositions of experts or rebuttal experts	December 23, 2020	February 23, 2021
Expert discovery closes	December 23, 2020	February 23, 2021
Lead Plaintiffs' counsel to file any motion for class certification	January 20, 2021	March 23, 2021
Defendants to file response in opposition to motion for class certification and related <i>Daubert</i> motions	February 18, 2021	April 20, 2021
Plaintiffs' reply in support of class certification and response in opposition to any related <i>Daubert</i> motions	March 10, 2021	May 11, 2021
Defendants' replies in support of any <i>Daubert</i> motions related to class certification	March 22, 2021	May 25, 2021
Deadline to file any motions for summary judgment (including any Article III challenges) and related <i>Daubert</i> motions	March 31, 2021	June 1, 2021
Responses in opposition to any motions for summary judgment and related <i>Daubert</i> motions	April 30, 2021	July 1, 2021
Replies iso of any motions for summary judgment and <i>Daubert</i> motions	May 21, 2021	July 22, 2021

We believe this maintains an aggressive but realistic schedule given the delays referenced in Defendants' Status Report, and look forward to addressing these issues with the Court at our hearing this afternoon.

Respectfully submitted,

/s/ Norman E. Siegel

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